From: "jeffrey E." <jeevacation@gmail.com>
To: Lvjet <[redacted]>
Subject: Re: 5173 PA questions
Date: Tue, 21 Feb 2017 18:12:14 +0000

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tell josh, as we are in europe and returning friday, you would like to sign the cob sat or sun. just like when we began, we gave him an exgtra two days.

On Tue, Feb 21, 2017 at 6:16 PM, Lvjet <[redacted]> wrote:

> Jeffrey,
> below is Chevron's comments,. also, Josh called me:
> He informs, as stated below, we must sign COB Thursday, Josh received another offer last week from a qualified buyer, (Josh did share, its for same money, $16m).
> Josh didn't mean it as a threat to us, telling me of the other offer, he said he keeps to his word, since we are in negotiations, and informed the other buyer, he would present their offer if we don't sign on Thursday. Josh was cordial with me.
>
> if their are further questions, Josh would put Chevron's council and Darren in direct communication today via conference call.
>
> regarding ferry flight from OAK to Westfield:
> he also informed, Chevron company policy does not allow for any person to travel on their planes, not approved by the board. (Ferry flight from OAK to Westfield) unless Josh recommended, once the plane arrives in Westfield, that we could test for 2 hours or more if we want at that time,. once the aircraft is in PREbuy, Chevron doesn't require board approval for passengers to be present during flight.
>
> pls advise on response?
>
> thank you,
> Larry
>
> -----Original Message-----
> From: Josh Mesinger <[redacted]>
> To: Larry Visoski <[redacted]>
> Sent: Tue, Feb 21, 2017 11:45 am
> Subject: FW: 5173 PA questions
>
> Larry,
>
> Please see the notes below addressing each of your questions and providing a few compromise changes. Review with your principal and counsel and let us know if we are good to go forward based upon this or not. If you have any last questions we can organize a conference call between your side and ours. We do need to get the contract signed by the close of business Thursday or move on and not tie this up any longer. It is our goal to hopefully get the contract signed with your principal by close of business Thursday and move the airplane within a business day or two after that. Thanks. Josh
>
> *Josh Mesinger, Vice President*
> *Mesinger Jet Sales*
> *3025 47th St., Suite D2, Boulder, CO 80301*
> *Ph: +1[redacted] eFax: +1[redacted]*
> *Cell: +1[redacted]*
> *Website:[redacted]*
> *A Legacy Of Aviation Innovation*
>
> Good Morning Josh,

Following are our responses to the buyer questions;

Regarding question # 1 & 5;

We are planning at closing the sale in Delaware, which does not have a sales tax at the current time. Chevron would not have any direct withholding tax obligation and we would likely provide an IRS Form W-9 to waive any withholding obligation on the Buyer's side as well. While the risk is small, if for some reason the transfer occurs elsewhere, such as at the Gulfstream facility in Massachusetts, for example, due to unforeseen timing or obligations, it would be best to leave the Chevron tax language in place to address these currently unforeseen contingencies.

Global comment #5 is addressing income tax withholding as opposed to a version of sales tax where sales tax is deemed to be a "withholding tax" in the sense that it is the tax jurisdiction's money and subject to timely remittance. While California does not work this way, Texas and most other states with sales tax would work this way. This is just a misunderstanding as to the type of tax being addressed, and not without some justification on their part.

In response I would suggest that we communicate with the Buyer the following response and propose to *proceed:*

"The Agreement is drafted with the intention of closing the sale of the Aircraft while it is on the ground in Delaware, where there is no applicable sales tax (Transfer or Transaction Taxes) and Chevron does not propose to add any Transfer or Transaction Taxes to the purchase price if the sale closing pursuant to its terms. Chevron proposes to keep the tax provisions in the Agreement intact to address any unforeseen, but mutually agreed, changes to the location or time of Closing. Likewise, Chevron intends to provide, upon request, an IRS Form W-9 to a waive the Buyer's obligation for any withholding tax in connection with the transaction."

Regarding question #2;

"2. Section 2.5 (B) of the agreement seeks to clarify that the liquidated damages provision in the event of a Purchaser default will impact neither the Buyer's Indemnity Obligations nor Seller's rights to indemnification under the agreement nor Seller's rights to require Buyer to return to Seller or provide to Seller documents or information required under the agreement (which we assume refers to the Confidentiality Obligations under Section 12.1(D)(2), for example, or Records Retention Audit Rights under Section 13.7, for example. The agreement imposes indemnity obligations on Seller under Section 9.6 and Seller has a warranty of title as provided in Exhibit C. Limiting Purchaser's remedies to return of the deposit and out-of-pocket expenses should not preclude the enforcement of Seller's indemnity obligations or warranty of title, and we would like the language in Section 2.5(B) to be reciprocal to address that issue."

Response: We're OK to the first part -

- The liquidated damages provisions relates solely to failure to close. If the buyer fails to complete the purchase due to buyer's fault, the amount of the deposit is agreed to be a reasonable estimate of sellers damages, and thus, liquidated damages. Section 2.5(B) implements this agreement that the damages for buyer's default and failure to close is equal to the deposit amount because it is a reasonable estimate of our damages.

- The Buyer's indemnity obligations relate to an assumption of liability as of the Closing. The liquidated damages address default pre-closing (and failure to close).

- The LD clause clarifies that it does not waive or affect the indemnity obligations if closing does occur. The LD clause also covers return of information.

- To the extent the agreement imposes indemnity obligations on seller, they are effective only if we close. This includes the title warranty which is only relevant if we close. Therefore we can agree to add the new language in 2.6.

"In addition, we believe that the confidentiality obligations in the agreement should be reciprocal, as should the Records Retention and Audit Rights, and would like those provisions modified to be reciprocal. We would also, therefore, request that the provisions in Section 2.5(B) referring to those document return and information provision rights and obligations be reciprocal to reflect the requested changes in the Confidentiality Provisions and the Records Retention and Audit Rights provisions."

- We will add definition of Buyer Confidential Information, and referenced our returning it in the event we fail to close. We disagree that records and audit rights should be reciprocal – we are in different positions as buyer and seller.

Also, adding their proposed changes to the audit and records provisions is something that would need to be reviewed with finance/compliance, and could take some time. I think we should push back on this as we typically do not agree to it in these kinds of transactions.

Question 3:

We agree to make changes to section 5.3 to include requests for additional items for the flight test provided we can refuse a request where flight of aircraft safety is at risk.

Question 4:

With regard to Section 9.5 and Seller having given consideration previously to a limited indemnity for pre-closing claims, please advise what the terms are of the limited pre-closing..[cut off]"

- The only potential indemnity for claims would be for third party Claims against Seller brought prior to the Closing Date where liability is attributable to the ownership, operation or maintenance of the Aircraft prior to the Closing Date. Section 9.6 (copied below) already covers this:

9.6 SELLER'S INDEMNIFICATION WITH RESPECT TO CERTAIN ITEMS.

(A) SELLER INDEMNITY. Effective at Closing: (i) Seller shall indemnify Buyer Group against all Claims, other than for Taxes, which result from, pertain to or arise out of the ownership or operation of the Aircraft by Seller (or anyone claiming under or through Seller) prior to the Closing, ...

From: Josh Mesinger [mailto:[redacted]]
Sent: Thursday, February 16, 2017 3:45 PM
To: Medlin, Lee A. (amdl)
Subject: [**EXTERNAL**] Fwd: 5173 PA questions

See below and then let's discuss.

Josh Mesinger, Vice President
Mesinger Jet Sales
3025 47th St., Suite D2, Boulder, CO 80301
Work:[redacted], Mobile:[redacted] eFax: [redacted]
[redacted], [redacted]

Begin forwarded message:

From: Larry Visoski <[redacted]>
Date: February 16, 2017 at 6:16:14 PM EST
To: Josh Mesinger <[redacted]>
Subject: 5173 PA questions

Josh,
Please find in this attachment, questions from my counsel.

Thank you,
Larry

Please see below notes from Plan D, LLC's counsel relating to the unresolved items in Seller's February 9, 2017 comments to Purchaser's previous round of suggested contract revisions. It appears that the following unresolved items were not addressed in Seller's most recent draft of the Purchase Agreement:

1. A Global Comment about Transfer Taxes and Transaction Taxes and Purchaser's Responsibility for any Withholding Obligations Relating to Seller. We are unaware of Chevron's tax situation or tax status or any taxes that may be imposed on Chevron in connection with this Transaction. We know of none from our end if we are to close in Delaware and do not want to obligate ourselves to any unknown or unquantified obligations on Chevron's end. If there are none, then we would prefer to delete from the agreement any obligation for

Purchaser to be responsible for any Transfer or Transaction Taxes. If there are specific taxes with which Chevron is concerned, then please advise and we can discuss, otherwise Purchaser should not be the guarantor of all Transfer and TransactionTaxes. The same holds true for withholding. Purchaser cannot know if Chevron has imposed on it a requirement that payments made to it be subject to withholding. As a PA corp. operating in the US and engaging in a transaction in the US, ordinarily, we would assume that there would be no withholding requirements on payments of purchase price in this transaction. If there are none, then there is no reason for Chevron to require language requiring Purchaser to be responsible for withholding. If there is a withholding requirement, then please advise and we can discuss.

2. Section 2.5 (B) of the agreement seeks to clarify that the liquidated damages provision in the event of a Purchaser default will impact neither the Buyer's Indemnity Obligations nor Seller's rights to indemnification under the agreement nor Seller's rights to require Buyer to return to Seller or provide to Seller documents or information required under the agreement (which we assume refers to the Confidentiality Obligations under Section 12.1(D)(2),for example, or Records Retention Audit Rights under Section 13.7, for example. The agreement imposes indemnity obligations on Seller under Section 9.6 and Seller has a warranty of title as provided in Exhibit C. Limiting Purchaser's remedies to return of the deposit and out-of-pocket expenses should not preclude the enforcement of Seller's indemnity obligations or warranty of title, and we would like the language in Section 2.5(B) to be reciprocal to address that issue. In addition, we believe that the confidentiality obligations in the agreement should be reciprocal, as should the Records Retention and Audit Rights, and would like those provisions modified to be reciprocal. We would also, therefore, request that the provisions in Section 2.5(B) referring to those document return and information provision rights and obligations be reciprocal to reflect the requested changes in the Confidentiality Provisions and the Records Retention and Audit Rights provisions.

3. In Section 5.3, the language relating to the Buyer's and Mfrs' representatives being able to request specific additional items for the flight test arises out of two concerns. First, we are unclear as to what is meant in Section 5.3 when it provides that the representatives may "request specific items to be conducted during the TestFlight to the extent expressly defined in this Agreement". "TestFlight" appears to be an undefined term and we are unclear as to what is modified by "to the extent expressly defined in this Agreement." To the extent what is expressly defined in this Agreement? Second, the notion that there has to be a written agreement from Seller's Pilots in advance without any obligation on their part to behave reasonably evinces a rigidity that may not be appropriate during an in-flight inspection, particularly where operational control is already is in the hands of the Seller's pilots to begin with. Should a particular event or circumstance during an evaluation in flight cause the Purchaser's or Mfrs.' representatives to seek additional information that may be obtained through an in-flight inspection item not previously specified or agreed to in writing, we simply want the ability, even in flight, if the request is reasonable, to request that specific item and to know that Seller's pilots cannot unreasonably refuse the request. As to what is "reasonable," it would certainly be reasonable to refuse a request where flight safety or aircraft safety is implicated by it. Otherwise with a plane full of pilots and mfr. representatives, it seems unlikely that they could not reach a consensus as to what is reasonable under the circumstances. There needs to be a certain degree of flexibility and cooperative spirit here. Also, Seller has in other parts of the agreement been satisfied with incorporating a reasonableness standard. See, for example, Sections 2.5, 2.6, 3.3, 4.1, 4.3, 4.4, 4.5, 5.5, 6.8, 9.6, 9.8, 11.5, 12.5, 13.4 and 15.7.

4. With regard to Section 9.5 and Seller having givenconsideration previously to a limited indemnity for pre-closing claims, please advise what the terms are of the limited pre-closing claim indemnity you would find agreeable. Also, in 9.5(E), it seems inconsistent to provide that Seller's damages are limited to $1MM of liquidated damages in Section 2.5(B) and then to include an indemnity for a breach of contract by Buyer's Group in Section 9.5(E). Can you please explain the particular breach to which Section 9.5(E) is directed?

5. With regard to your question as to Section 11.1(D) for Purchaser to "Please explain why there is an issue with Chevron withholding and remitting if required to do so by law", Section 11.1(D) does not address Chevron withholding and remitting. Section 11.1(D) addresses the requirement that Buyer withhold from payment to Seller and remit to the authorities. This would have been fine, but for the conflicting provision at the beginning of Section 2.4(D) stating: "Buyer shall make payments in Dollars, by bank wire transfer, in immediately available funds, paid without set-off, **withholding (including any withholding tax according to Section 11.1(D))** or any deduction of any kind, including for any banking, transfer or other costs or Claims." Can we please clarify Seller's intentions as to those provisions.

1

Sent from my iPad

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please note